

**UNITED STATES DISTRICT COURT  
DISTRICT OF COLUMBIA**

MEMPHIS PUBLISHING COMPANY <i>et</i>	)	
<i>al.</i> ,	)	
	)	
Plaintiffs,	)	
	)	Civil Action No. 1:10cv01878 (ABJ)
v.	)	
	)	
FEDERAL BUREAU OF	)	
INVESTIGATION,	)	
	)	
Defendant.	)	

**NOTICE OF FILING OF VAUGHN INDEX**

Pursuant to the Court's scheduling order of May 7, 2012, Defendant Federal Bureau of Investigation hereby files the Second Declaration of Dennis J. Argall prepared in accordance with *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973).

Respectfully submitted,

STUART F. DELERY  
Acting Assistant Attorney General

ELIZABETH J. SHAPIRO  
Deputy Director  
Federal Programs Branch

s/ Lesley R. Farby  
WENDY M. DOTY, DC Bar No. 490228  
LESLEY R. FARBY, DC Bar No. 495625  
Trial Attorneys  
Federal Programs Branch  
U.S. Department of Justice, Civil Division  
20 Massachusetts Avenue NW, Room 7220  
Washington, DC 20530  
Telephone: (202) 514-3481  
Fax: (202) 616-8470  
Email: [lesley.farby@usdoj.gov](mailto:lesley.farby@usdoj.gov)

Dated: July 2, 2012

*Counsel for Defendant Federal Bureau of  
Investigation*

**CERTIFICATE OF SERVICE**

I hereby certify that on July 2, 2012, a copy of the foregoing document was filed electronically via the Court's ECF system, through which a notice of the filing will be sent to all counsel of record.

s/ Lesley R. Farby  
LESLEY R. FARBY

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

MEMPHIS PUBLISHING  
COMPANY, publisher of  
*The Commercial Appeal*

and

MARC PERRUSQUIA

Plaintiffs,

v.

FEDERAL BUREAU OF INVESTIGATION,

Defendant.

Civil Action No. 10-1878 (ABJ)  
Judge Amy Berman Jackson

**SECOND DECLARATION OF DENNIS J. ARGALL**

I, Dennis J. Argall, declare as follows:

(1) I currently serve as the Assistant Section Chief of the Record/Information Dissemination Section ("RIDS"), Records Management Division ("RMD"), at Federal Bureau of Investigation Headquarters ("FBIHQ") in Winchester, Virginia and, in the absence of RIDS Section Chief, David M. Hardy, I serve as Acting Section Chief of RIDS. I became the Assistant Section Chief on November 1, 2008. From August 18, 2008 until October 31, 2008, I was the Unit Chief of the Litigation Support Unit. I have been employed by the FBI since August 18, 2008. Prior to my joining the FBI, from July 11, 2005 until July 10, 2008, I was on active duty in the United States Navy and assigned to United States Fleet Forces Command, located in Norfolk, Virginia, as the Fleet Judge Advocate. In that capacity, I was responsible for reviewing all information being released under the Freedom of Information Act (FOIA). From

August 17, 1983 to July 11, 2005, I served as an active duty Navy Judge Advocate at various commands and routinely dealt with FOIA matters, including a tour from January 1987 to September 1988 with the Department of the Navy Litigation Office where I was a litigation counsel for FOIA matters. I am also an attorney who has been licensed to practice law in the State of Wisconsin since 1983.

(2) In my official capacity as Acting Section Chief of RIDS, I supervise approximately 274 employees who staff a total of ten (10) FBIHQ units and two field operational service center units whose collective mission is to effectively plan, develop, direct, and manage responses to requests for access to FBI records and information pursuant to the FOIA; as most recently amended by the OPEN Government Act of 2007 and the OPEN FOIA Act of 2009; the Privacy Act of 1974; Executive Order 13526; Presidential, Attorney General and FBI policies and procedures; judicial decisions and Presidential and Congressional directives. The statements contained in this declaration are based upon my personal knowledge, upon information provided to me in my official capacity, and upon conclusions and determinations reached and made in accordance therewith.

(3) Due to the nature of my official duties, I am familiar with the procedures followed by the FBI in responding to requests for information pursuant to the provisions of the FOIA, 5 U.S.C. § 552, and the Privacy Act of 1974, 5 U.S.C. § 552a. Specifically, I am aware of the FBI's response to the FOIA requests of plaintiff Marc Perrusquia of *The Commercial Appeal* (collectively "plaintiffs"). Both his February 12, 2008 FOIA request to FBIHQ and his September 2, 2008 FOIA request to the FBI's Memphis Field Office sought access to records concerning Ernest C. Withers.

(4) In accordance with Vaughn v. Rosen, 484 F.2d 820 (D.C. Cir. 1973), this declaration is being submitted in support of the FBI's eventual motion for summary judgment. It supplements the information previously provided in David M. Hardy's February 8, 2011 declaration and in my June 15, 2011 declaration ("First Argall Declaration"). Together, these declarations will provide the Court and plaintiffs with an explanation of the procedures used in reviewing and processing the records responsive to plaintiff Perrusquia's FOIA requests and a justification for the withholding of FBI information in full or in part pursuant to FOIA Exemptions 2, 3, 5, 6, 7(C), 7(D), and 7(E), 5 U.S.C. §§ 552 (b)(2), (b)(3), (b)(5), (b)(6), (b)(7)(C), (b)(7)(D), and (b)(7)(E).

#### **PROCEDURAL HISTORY OF PLAINTIFF PERRUSQUIA'S FOIA REQUESTS**

(5) The procedural history associated with plaintiff Perrusquia's FOIA requests, through the FBI's June 2011 production of additional records to plaintiff Perrusquia was detailed in the First Argall Declaration (*See* First Argall Decl. ¶¶ 5-28).

(6) Since the First Argall Declaration, the FBI made one additional release of records to plaintiff Perrusquia. By letter dated May 15, 2012, and consistent with this Court's ruling of January 31, 2012, the FBI released all non-exempt, reasonably segregable information relating to Ernest Withers' service as an FBI confidential informant. In that letter, plaintiff Perrusquia was advised that 344 pages were being released in redacted form, that additional pages were being withheld in their entirety, and that these withholdings were made pursuant to FOIA Exemptions (b)(6), (b)(7)(C), (b)(7)(D), and (b)(7)(E).<sup>1</sup> The FBI advised plaintiff Perrusquia that he could

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<sup>1</sup> This letter incorrectly stated that 344 pages were released. The FBI actually released 348 pages. The FBI should have also noted in this letter its assertion of Exemption 2 and should not have asserted Exemption 7(E), on which it does not intend to rely to withhold any

appeal the FBI's determination by filing an administrative appeal with DOJ OIP within sixty days. (See Exhibit A.)

**SEARCH FOR RECORDS RESPONSIVE TO  
PLAINTIFF PERRUSQUIA'S REQUESTS**

(7) The FBI's search for responsive records is detailed in the First Argall Declaration. (See First Argall Decl. ¶¶ 35-38.) In conducting the search described in Paragraphs 35 and 36, and utilizing the same search methodology described therein, the FBI also located records relating to Withers' service as an informant at both FBI Headquarters and the Memphis Field Office. The records the FBI located included records contained in both main and cross-reference files. The FBI did not initially identify these records to plaintiff Perrusquia as responsive because, in its view, those records are not subject to the FOIA. Consistent with this Court's order of January 31, 2012, and as described above, however, the FBI released all non-exempt, reasonably segregable portions of those informant records to plaintiff Perrusquia on May 15, 2012.

(8) In sum, the FBI made four releases to plaintiff Perrusquia. The exemptions pertaining to the first three releases (March 12, 2009, March 8, 2010, and June 8, 2011) were addressed in the First Argall Declaration. The exemptions pertaining to the fourth and final release (May 15, 2012) are addressed in this declaration.

**EXPLANATION OF THE CODED FORMAT USED FOR THE  
JUSTIFICATION OF DELETED MATERIAL**

(9) All documents were processed to achieve maximum disclosure consistent with the access provisions of the Privacy Act and the FOIA. Every effort was made to provide plaintiff \_\_\_\_\_ information from the Withers' confidential informant records.

Perrusquia with all material in the public domain and with all reasonably segregable portions of releasable material. No reasonably segregable, nonexempt portions were withheld from plaintiff Perrusquia. To further describe the information withheld could identify the very material which the FBI seeks to protect. The exemptions presently asserted by the FBI as grounds for withholding documents in their entirety, or for withholding portions thereof, are FOIA Exemptions 2, 6, 7(C), and 7(D).

(10) Copies of all pages that were released in part contain, on their face, coded categories of exemptions which detail the nature of the information withheld pursuant to the provisions of the FOIA. (See Exhibit B.) The coded categories are provided to aid the Court's and plaintiffs' review of the FBI's explanations of FOIA exemptions used to withhold the protected material. Each instance of information withheld on the attached documents is accompanied by a coded designation that corresponds to the categories listed below. For example, if "(b)(7)(C)-1" appears on a document, the "(b)(7)(C)" designation refers to "Exemption (b)(7)(C)" of the FOIA concerning an "Unwarranted Invasion of Privacy." The numerical designation of "1" following the "(b)(7)(C)" narrows the main category into the more specific subcategory, "Names and/or Identifying Information Pertaining to FBI Special Agents and Support Personnel."

(11) Listed below are the categories used to explain the FOIA exemptions asserted to withhold all protected material from records pertaining to Withers' status as an informant.

<b>SUMMARY OF JUSTIFICATION CATEGORIES</b>	
<b>CODED CATEGORIES</b>	<b>INFORMATION WITHHELD</b>
<b>Category (b)(2)</b>	<b>INTERNAL AGENCY PERSONNEL RULES AND PRACTICES</b>
<b>(b)(2)</b>	Informant Personnel Information
<b>Category (b)(6) and (b)(7)(C)</b>	<b>CLEARLY UNWARRANTED INVASION OF PRIVACY AND UNWARRANTED INVASION OF PERSONAL PRIVACY</b>
<b>(b)(6)-1 and (b)(7)(C)-1</b>	Names and/or identifying information of FBI Special Agents and support personnel
<b>(b)(6)-2 and (b)(7)(C)-2</b>	Names and/or identifying information of third parties who provided information to the FBI [cited at times in conjunction with (b)(7)(D)-1 or (b)(7)(D)-5]
<b>(b)(6)-3 and (b)(7)(C)-3</b>	Names and/or identifying information of third parties merely mentioned in FBI investigative records
<b>(b)(6)-4 and (b)(7)(C)-4</b>	Names and/or identifying information of third parties of investigative interest
<b>(b)(6)-5 and (b)(7)(C)-5</b>	Names and/or identifying information concerning local and/or state law enforcement employees
<b>(b)(6)-6 and (b)(7)(C)-6</b>	Names and/or identifying information concerning non-FBI federal government personnel
<b>Category (b)(7)(D)</b>	<b>CONFIDENTIAL SOURCE MATERIAL</b>
<b>(b)(7)(D)-1</b>	Names and/or identifying information of individuals who provided information to and cooperated with the FBI under implied assurances of confidentiality [cited at times in conjunction with (b)(6)-2 and (b)(7)(C)-2]
<b>(b)(7)(D)-2</b>	Confidential source symbol numbers
<b>(b)(7)(D)-3</b>	Confidential source file numbers
<b>(b)(7)(D)-4</b>	Information provided by source symbol numbered informants under express assurances of confidentiality



<b>SUMMARY OF JUSTIFICATION CATEGORIES</b>	
<b>CODED CATEGORIES</b>	<b>INFORMATION WITHHELD</b>
<b>(b)(7)(D)-5</b>	Names and/or identifying information of individuals who provided information to and cooperated with the FBI under express assurances of confidentiality [cited at times in conjunctions with (b)(6)-2 and (b)(7)(C)-2]
<b>(b)(7)(D)-6</b>	Information provided by a local law enforcement agency

(12) The paragraphs that follow describe the information withheld in greater detail and explain the FBI's rationale for withholding each particular category of information under the specific exemption categories described above.

**EXEMPTION (b)(2)**  
**INFORMATION RELATED SOLELY TO INTERNAL AGENCY**  
**PERSONNEL RULES AND PRACTICES**

(13) 5 U.S.C. § 552 (b)(2) exempts from disclosure information "related solely to the internal personnel rules and practices of an agency." This exemption applies to information that relates to an agency's "rules and practices dealing with employee relations or human resources" and that is "internal"; that is, the agency must typically keep the records to itself for its own use.

(14) Exemption (b)(2) has been asserted to protect internal personnel information pertaining to the FBI's decision to retain and continue to avail itself of Ernest Withers' services as a confidential informant and the administrative information pertaining to the management of Withers after becoming a confidential informant. The protected information consists of: (1) background information pertaining to Withers – addresses, contact information, physical descriptions, employment history, and background searches conducted regarding Withers to analyze his potential as an informant; (2) analysis of Withers' reliability as an informant; (3)

administrative updates regarding Withers' activity level; (4) administrative requests for continued use or discontinuance of Withers as an informant; and (5) requests for authority to make payments to Withers, payment history and payment amounts. This information is solely internal and reflects the FBI's internal administrative practices with respect to the recruitment, management, payment, and retention of confidential informants; it is kept by the agency for its own use and is of no genuine public interest. The FBI has properly withheld this information pursuant to Exemption (b)(2).

#### **EXEMPTION (b)(7) GENERALLY**

(15) As a law enforcement agency, the FBI upholds and enforces the criminal laws of the United States, provides leadership and criminal justice services to federal, state, municipal, and international agencies and partners, and, as a threat-based and intelligence-driven national security organization, protects and defends the United States against terrorist and foreign intelligence threats. Exemption 7 of the FOIA allows a law enforcement agency to protect from mandatory disclosure records or information compiled for law enforcement purposes, but only to the extent that disclosure could reasonably be expected to cause one of the harms enumerated in the subparts of the exemption. *See* 5 U.S.C. § 552(b)(7). The records at issue in this case were compiled for criminal law enforcement and national security purposes during the course of the FBI's performance of its law enforcement mission, and the harm that could reasonably be expected to result from disclosure concerns invasion of personal privacy or the revelation of the identities of confidential sources or information provided by confidential sources.

**EXEMPTIONS (b)(6) AND (b)(7)(C)**  
**CLEARLY UNWARRANTED AND UNWARRANTED**  
**INVASION OF PERSONAL PRIVACY**

(16) 5 U.S.C. § 552(b)(6) exempts from disclosure:

“personnel and medical files and similar files” when the disclosure of such information would constitute a clearly unwarranted invasion of personal privacy.

(17) Similarly, 5 U.S.C. § 552 (b)(7)(C) exempts from disclosure:

records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information . . . could reasonably be expected to constitute an unwarranted invasion of personal privacy.<sup>2</sup>

(18) When withholding information pursuant to these two exemptions, the FBI is required to balance the privacy interests of the individuals mentioned in these records against any public interest in disclosure. In asserting these exemptions, each item of information was scrutinized to determine the nature and strength of the privacy interest of any individual whose name and/or identifying information<sup>3</sup> appears in the documents at issue. The FBI withheld information pursuant to this exemption when it determined that the individuals’ privacy interests outweighed the public’s interest in disclosure – where the public interest in the information was

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<sup>2</sup> The FBI asserted Exemption (b)(6) in conjunction with (b)(7)(C). Although the balancing test for (b)(6) uses a “would constitute a clearly unwarranted invasion of personal privacy” and the test for (b)(7)(C) uses the lower standard of “could reasonably be expected to constitute an unwarranted invasion of personal privacy,” the analysis and balancing required by both exemptions is sufficiently similar to warrant a consolidated discussion. The privacy interests are balanced against the public’s interest in disclosure under the analysis of both exemptions.

<sup>3</sup> “Identifying information” can include, but is not limited to, names, addresses, telephone numbers, dates of birth, employment background, job titles, and educational background.

determined to be any information which would shed light on the FBI's performance of its mission to uphold and enforce federal criminal laws and protect the national security of the United States. As part of this balancing test, the FBI considered the age of the documents at issue in this case. However, the FBI's general practice is to abide by the judicially-recognized "100 year rule." Under this rule, without valid proof of death or reliable information that an individual is more than 100 years old, the FBI presumes that the referenced individual retains his or her privacy interests. In this case, each instance where information was withheld pursuant to Exemptions (b)(6) and (b)(7)(C), the FBI determined that the individuals' privacy rights were outweighed by any public interest in disclosure.

**(b)(6)-1 and (b)(7)(C)-1      Names of FBI Special Agents and support personnel**

(19) Exemptions (b)(6)-1 and (b)(7)(C)-1 have been asserted to protect the names of FBI Special Agents ("SAs") and support personnel who were responsible for conducting, supervising, and/or maintaining the investigative activities reported in the documents included within Ernest Withers' informant records. These responsibilities included interviewing cooperating witnesses and sources, and reviewing materials compiled as a result of, or in accordance with the FBI's investigations. Assignments of SAs to any particular investigation are not by choice. Publicity (adverse or otherwise) regarding any particular investigation to which they have been assigned may seriously prejudice their effectiveness in conducting other investigations. The privacy consideration is also to protect FBI SAs, as individuals, from unnecessary, unofficial questioning as to the conduct of this or other investigations, whether or not they are currently employed by the FBI. FBI SAs conduct official inquiries into various criminal and national security violation cases. They come into contact with all strata of society,

conducting searches and making arrests, both of which result in reasonable but nonetheless serious disturbances to people and their lives. It is possible for an individual targeted by such law enforcement actions to carry a grudge which may last for years. These individuals may seek revenge on the agents and other federal employees involved in a particular investigation. The publicity associated with the release of an agent's identity in connection with a particular investigation could trigger hostility toward a particular agent. There is no public interest to be served by disclosing the identities of the SAs to the public. Thus, disclosure of this information would constitute a clearly unwarranted invasion of their personal privacy.

(20) The names of FBI support employees are also withheld pursuant to FOIA Exemption (b)(6)-1 and (b)(7)(C)-1. These employees were assigned to handle tasks relating to the investigations referenced in Ernest Withers' informant records. They were, and possibly are, in positions of access to information regarding official law enforcement investigations, and therefore could become targets of harassing inquiries for unauthorized access to investigations if their identities were released. These individuals maintain substantial privacy interests in not having their identities disclosed. There is no public interest to be served by releasing the identities of these individuals. Thus, disclosure of this information would constitute a clearly unwarranted invasion of their personal privacy. Accordingly, the FBI properly protected this information pursuant to FOIA Exemptions (b)(6)-1 and (b)(7)(C)-1.

**(b)(6)-2 and (b)(7)(C)-2      Names and/or identifying information of third parties or who provided information to the FBI**

(21) Exemptions (b)(6)-2 and (b)(7)(C)-2 have been asserted to withhold the names of third parties contained in various communications which reflect the internal discussion of

individuals who are the subjects of law enforcement investigations or who provided information regarding these investigations.

(22) Disclosure of the identities of these third parties in this context could cause unsolicited and unnecessary attention to be focused on them, and disclosure may embarrass them. For these reasons, the FBI has determined that the third party individuals mentioned in the responsive communications maintain a strong privacy interest in not having their identities disclosed.

(23) After identifying the substantial privacy interest of the third parties mentioned in the communications, the FBI balanced those interests against the public interest in disclosure. The FBI could identify no discernible public interest in the disclosure of this information because the disclosure of third parties' names and identifying information will not shed light on the operations and activities of the FBI. Accordingly, the FBI determined that the disclosure of this information would constitute a clearly unwarranted invasion personal privacy. The FBI properly protected this information pursuant to FOIA Exemptions (b)(6)-2 and (b)(7)(C)-2.

**(b)(6)-3 and (b)(7)(C)-3**      **Names and/or identifying information of third parties merely mentioned**

(24) Exemptions (b)(6)-3 and (b)(7)(C)-3 have been asserted to withhold the identities of third parties who are merely mentioned in various communications which reflect the FBI's internal discussion of individuals who are the subjects of law enforcement investigations. These individuals are not of investigative interest to the FBI, but are merely mentioned in these communications.

(25) Disclosure of the identities of these third parties in this context could cause unsolicited and unnecessary attention to be focused on them, and disclosure could embarrass them. For these reasons, the FBI has determined that the third party individuals merely mentioned in the responsive communications maintain a strong privacy interest in not having their identities disclosed.

(26) After identifying the substantial privacy interest of the third parties merely mentioned in the communications, the FBI balanced those interests against the public interest in disclosure. The FBI could identify no discernible public interest in the disclosure of this information because the disclosure of third parties' names will not shed light on the operations and activities of the FBI. Accordingly, the FBI determined that the disclosure of this information would constitute a clearly unwarranted invasion of personal privacy. The FBI properly protected this information pursuant to FOIA Exemptions (b)(6)-3 and (b)(7)(C)-3.

**(b)(6)-4 and (b)(7)(C)-4**      **Names and/or identifying information of third parties of investigative interest**

(27) Exemptions (b)(6)-4 and (b)(7)(C)-4 have been asserted to protect the names and identifying information of third party individuals who are of investigative interest to the FBI and/or other law enforcement agencies. Identifying information withheld concerning these third parties includes, but is not limited to, date of births, addresses, and other personal information. Being linked with any law enforcement investigation carries a strong negative connotation and a stigma. To release the identities of these individuals to the public could subject them to harassment or embarrassment, as well as undue public attention. Accordingly, the FBI has determined that these individuals maintain a substantial privacy interest in not having their

identities disclosed. In making a determination whether to release the names and personal information concerning these third parties, the public's interest in disclosure was balanced against the individual's right to privacy. It was determined that this information would not enlighten the public on how the FBI conducts its internal operations and investigations. Accordingly, the FBI concluded that the disclosure of this information would constitute a clearly unwarranted invasion of their personal privacy. The FBI properly withheld this information pursuant to Exemptions (b)(6)-4 and (b)(7)(C)-4.

**(b)(6)-5 and (b)(7)(C)-5**      **Names and/or identifying information of local and state law enforcement employees**

(28) Exemptions (b)(6)-5 and (b)(7)(C)-5 have been asserted to withhold the names and identifying information of local and state law enforcement employees. Identifying information withheld includes at times the title of these employees. These employees were acting in their official capacity and aided the FBI in the law enforcement investigative records responsive to plaintiff Perrusquia's request. The rationale for protecting the identities of FBI SAs and support personnel found at paragraphs 19-20, supra, also pertains to withholding the names and identifying information of these state and local law enforcement employees. To release the identities of these law enforcement employees could subject them as individuals to unnecessary, unwarranted harassment which would constitute an unwarranted invasion of privacy. Furthermore, these individuals could become a prime target for compromise if their identities were known. There is no public interest to be served in releasing the identities of these individuals. Accordingly, the FBI concluded that the disclosure of this information would



constitute a clearly unwarranted invasion of their personal privacy. The FBI properly withheld this information pursuant to Exemption (b)(6)-5 and (b)(7)(C)-5.

**(b)(6)-6 and (b)(7)(C)-6**      **Names and/or identifying information of non-FBI Federal government personnel**

(29) Exemptions (b)(6)-6 and (b)(7)(C)-6 have been asserted to protect the names and identifying information concerning non-FBI Federal government personnel. Identifying information withheld includes at times the title of these employees. The relevant inquiry here is whether public access to this information would violate a viable privacy interest of these individuals and whether there is a public interest in releasing their identities. Disclosure of their identifying information could subject these employees to unauthorized inquiries and harassment which would constitute a clearly unwarranted invasion of their personal privacy. The rationale for protecting non-FBI federal government employees is the same as that for FBI employees.

(30) In balancing the legitimate privacy interest of these individuals against any public interest in disclosure, the FBI determined that there is no public interest in disclosing this information because it will not shed light on the operations and activities of the federal government. Accordingly, the FBI concluded that the disclosure of this information would constitute a clearly unwarranted invasion of their personal privacy. The FBI properly withheld this information pursuant to Exemption (b)(6)-6 and (b)(7)(C)-6.

**EXEMPTION (b)(7)(D)**  
**CONFIDENTIAL SOURCE INFORMATION**

(31) 5 U.S.C. § 552 (b)(7)(D) provides protection for:

records or information compiled for law enforcement purposes, but only to the extent that the production of law enforcement records or information . . . could reasonably be expected to disclose the

identity of a confidential source, including a state, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source.

(32) Numerous informants report to the FBI on a regular basis and are informants in the common meaning of the term. Some of the sources provide information under an express assurance of confidentiality. Further, during the course of an investigation, other individuals are interviewed under circumstances from which an assurance of confidentiality can reasonably be inferred. In either situation, these individuals are considered to be confidential informants or sources since they furnish information only with the understanding that their identities and the information provided will not be divulged outside the FBI. Information provided by these individuals is singular in nature, and if released, could reveal their identity. The FBI has learned through experience that individuals who assist, cooperate with, and provide information to the FBI must be free to do so without fear of reprisal. The FBI has also learned that individuals who provide information to the FBI must be free to furnish that information with complete candor and without the understandable tendency to hedge or withhold information because of fear that their cooperation with the FBI will later be made public. Individuals who provide information to the FBI should be secure in the knowledge that their assistance and their identities will be held in confidence, even after death.

(33) The release of a source's identity would forever eliminate that source as a future means of obtaining information. In addition, when the identity of one source is revealed, that revelation has a chilling effect on the activities and cooperation of other sources. Such a result

would eliminate one of the FBI's most important means of collecting information and thereby severely hamper law enforcement efforts to detect and apprehend individuals engaged in the violation of federal criminal laws.

(34) Moreover, even if a confidential source has been publicly identified as the provider of particular information, it is the FBI's policy not to reveal the identity of the source as to other information or investigations. A source's identity as the provider of information in a particular investigation or portion of an investigation may be public knowledge, but his or her identity as a source as to other information may not be public knowledge. Disclosing the full scope of an informant's work for the FBI, even when only a portion of that work is public knowledge, would have an additional chilling effect on the activities and cooperation of future sources. For example, a future source may be comfortable with the idea that his or her identity as a source with respect to certain matters may be revealed through his or her public testimony, but that same source may not be comfortable with the idea that such testimony would waive the confidentiality of which the source was assured as to all other information the source provided to the FBI. As such, the FBI protects source-identifying or source-provided information that has not been publicly released even when the source's identity as a confidential source generally is public knowledge.

**(b)(7)(D)-1 Names, identifying data and/or information provided by individuals under an "Implied" assurance of confidentiality**

(35) Exemption (b)(7)(D)-1 has been asserted to protect the names of, identifying information for, and information provided by, third parties to the FBI or other law enforcement agencies in the investigative files under an implied grant of confidentiality. An assurance of

confidentiality may be implied since these third parties provided information or assisted the FBI in its undercover surveillance operations related to the criminal law enforcement or national security investigations at issue in Ernest Withers' informant records. Furthermore, these third party sources provided specific detailed information that is singular in nature. Third parties who provide information in support of or participate in undercover FBI surveillance operations under these circumstances warrant the protection of the third party's name as well as the information the individual provided, to the extent that the information would identify the third party. The disclosure of the identities of these individuals could have disastrous consequences. These third parties provided information of value to the FBI concerning its investigations, and in doing so, placed themselves in harm's way should their cooperation with the FBI and law enforcement have become known. Failing to maintain the confidentiality of such sources would therefore have a chilling effect on the activities and cooperation of future sources.

(36) The information the third parties provided under an assurance of confidentiality warrants the protection of the third party names as well as the singular, identifying information they provided. Thus, the FBI has properly withheld this information pursuant to FOIA Exemption (b)(7)(D)-1.

**(b)(7)(D)-2 Confidential source symbol numbers**

(37) FOIA Exemption (b)(7)(D)-2 has been asserted to protect from disclosure the permanent source symbol numbers of confidential sources of the FBI. The FBI assigns permanent source symbol numbers in sequential order to confidential informants who report

information to the FBI on a regular basis pursuant to an express assurance of confidentiality. In this case, the FBI did not refer to the confidential sources by their true names. Instead, the sources were referred to only by their individually assigned permanent source symbol numbers. The FBI obtained information from these confidential sources during the FBI's law enforcement investigations at issue in Ernest Withers' informant records.

(38) If the FBI disclosed the confidential source symbol numbers of these informants, their identities could be ascertained by persons knowledgeable of the FBI's law enforcement investigations at issue in Ernest Withers' informant records. Furthermore, if the FBI disclosed their identities, the informants, as well as their families, could be subjected to embarrassment, humiliation, and/or physical or mental harm. Disclosure of source symbol numbers at various times and in various documents could identify these confidential FBI sources because such disclosures would reveal the connections of these confidential informants to the subject matters of these documents. Repeated release of these confidential source symbol numbers along with the information provided by these confidential sources would narrow the possibilities of their true identities. This is especially true inasmuch as each confidential source symbol number is assigned to only one confidential informant.

(39) Moreover, the disclosure of these confidential informants' identities would have a chilling effect on the activities and cooperation of other FBI confidential informants. The FBI has found that it is only with the understanding of complete confidentiality that the aid of such informants can be enlisted, and only through this confidence that these informants can be

persuaded to continue providing valuable assistance in the future. Accordingly, the disclosure of these source symbol numbers could reasonably be expected to disclose the identities of FBI confidential sources. The FBI properly withheld this information pursuant to FOIA Exemption (b)(7)(D)-2.

**(b)(7)(D)-3 Confidential source file numbers**

(40) Exemption (b)(7)(D)-3 has been cited to protect confidential source file numbers of permanent confidential sources of the FBI. Confidential source file numbers are administrative tools that facilitate the retrieval of information supplied by a source. Similar in usage to the confidential source symbol number, this confidential source file number is also assigned in sequential order to confidential informants who report information to the FBI on a regular basis pursuant to an express assurance of confidentiality. The confidential source file is unique to the particular confidential informant and is used only in documentation relating to that particular informant.

(41) Disclosure of confidential source file numbers at various times and in various documents could ultimately identify these sources since it would reveal the connections of confidential informants to the information provided by them. Repeated release of confidential source file numbers along with the information provided by these confidential informants would narrow the possibilities of their true identities. This is especially true since each confidential source file number is assigned to only one confidential informant.

(42) The disclosure of the identity of this confidential source would have a chilling effect on the activities and cooperation of other confidential informants. It is only with the understanding of complete confidentiality that the aid of such informant can be enlisted, and only

through this assurance of confidentiality that these informants can be persuaded to continue their assistance in providing information to the FBI in the future. Accordingly, the disclosure of confidential source file numbers could reasonably be expected to identify permanent confidential sources of the FBI. The FBI properly withheld this information pursuant to Exemption (b)(7)(D)-3.

**(b)(7)(D)-4 Information provided by a confidential source symbol numbered informant under express assurances of confidentiality**

(43) FOIA Exemption (b)(7)(D)-4 has been asserted to protect from disclosure certain identifying information concerning a confidential symbol number source of the FBI who reported information to the FBI on a regular basis under express assurances of confidentiality. This identifying information concerns the particular investigative matters and individuals in which this confidential symbol number source reported information to the FBI. Informant symbol numbers are not assigned to all informants of the FBI. They are only assigned to informants who have been developed, instructed, closely monitored and, in many cases, paid for their services. Symbol numbered informants often work their way into criminal organizations and into the confidences of subjects of FBI criminal investigations. They become privy to the latest information about the activities of subjects under investigation and are often the recipients of sensitive, confidential disclosures by subjects of investigations. These informants report information to the FBI on a regular basis under strictly controlled and confidential circumstances pursuant to an express assurance of confidentiality. Given the sensitive and singular nature of the information provided by such sources, any information provided by them to the FBI which could ultimately identify them or the matters upon which they informed was withheld.

(44) Source symbol numbers and confidential source file numbers are assigned in sequential order to confidential informants. These sources are not typically referred to by name in any FBI document which records the information the sources have furnished. The reference in an FBI document to a confidential source by source symbol number rather than by name is designed to protect the true identity of the sources who provide information in the course of an FBI investigation. These precautions against the disclosure of the identities of confidential sources are observed because of the sensitive nature of the information provided by such sources and the possibility of harm to these sources and their families if their identities were revealed.

(45) The release of the identity of a confidential symbol number source to the public would result in the FBI's inability to use that source in the future. In addition, the revelation of one confidential source's identity, including his identity as an informant with respect to specific matters, has a chilling effect on the activities and cooperation of other sources. It is only with the understanding of complete confidentiality that the aid of such sources can be enlisted, and only through this confidence that these sources can be persuaded to continue providing valuable assistance in the future.

(46) FOIA Exemption (b)(7)(D)-4 has also been asserted to withhold all information provided by a confidential source in a criminal law enforcement investigation or lawful national security investigation, regardless of whether that information could identify the source. Specifically, all information that either Withers or other confidential informants provided to the FBI that has not already been publicly revealed has been withheld because that information was provided in the course of a criminal law enforcement or lawful national security investigation.



(47) The FBI has also withheld any information that identifies the scope of Withers' service as an informant, including the volume of pages, as this information could reveal the scope of Withers' possible informant activities. Although this Court has ruled that Withers' status as an informant has been disclosed, that disclosure revealed Withers' informant status only with respect to a discrete set of information. Disclosing the full scope of an informant's work for the FBI, even when a portion of that work is public knowledge, would have an additional chilling effect on the activities and cooperation of future sources. As such, the FBI properly withheld, pursuant to Exemption (b)(7)(D)-4, this additional detail regarding the scope of the information provided by Withers as a criminal law enforcement and national security informant.

(48) The information withheld pursuant to Exemption (b)(7)(D)-4 is as follows: memoranda, reports, agent notes, and/or forms containing information furnished by a confidential source; memoranda concerning the status of, justification for, and activities undertaken by a confidential source; notes, photos, newspaper articles and other material provided by a confidential source or relating to activities conducted as a confidential source; payment records pertaining to the scope and frequency of the activities of a confidential source; internal file numbers and file names that suggest the nature of the information upon which Withers or other source symbol numbered informants provided information on a confidential basis. Since the disclosure of this information (1) could reasonably be expected to disclose the identity of a permanent confidential symbol numbered source of the FBI, and/or his identity as an informant with respect to specific matters, and/or (2) is information provided by a source in the course of a

criminal law enforcement or national security investigation, the FBI has properly withheld this information pursuant to FOIA Exemption (b)(7)(D)-4.

**(b)(7)(D)-5    Name and/or identifying information of an individual who provided information to and cooperated with the FBI under an "Express" assurance of confidentiality**

(49)    Exemption (b)(7)(D)-5 has been asserted to protect from disclosure the name of, identifying information for, and information provided by an individual to the FBI during the course of the law enforcement investigations referenced in Ernest Withers' informant records under an express grant of confidentiality.

(50)    In this case, these individuals requested that their identity not be disclosed because they feared reprisal. Prior to conducting interviews, the law enforcement officials expressly promised the third party interviewee that his or her identity and the information he or she provided would not be disclosed. This is evidenced at times in the documents by the use of the following phrases when the individual's name is referenced in the file: "It was confidentially ascertained," or "Who requested that their identity be protected." These phrases indicate these individuals provided information to the FBI pursuant to an express assurance of confidentiality.

**(b)(7)(D)-6    Information Provided by a Local Law Enforcement Agency**

(51)    Exemption (b)(7)(D)-6 is cited to protect source information provided to the FBI by a local law enforcement agency. Disclosure of this information could directly link the information to the individual who provided such information to the local law enforcement agency resulting in harm to that person and possibly that person's family. Publicity, adverse or otherwise, concerning an individual's participation and the information supplied in a particular

FBI investigation would seriously impair their effectiveness in assisting with or participating in such future investigations. The publicity associated with the release of this information could trigger hostility towards the person providing the information. There is no public interest to be served by releasing this information.

(52) Confidential source material protected by the assertion of Exemption (b)(7)(D)-6 includes information provided to the FBI from a local law enforcement agency or authority with an understanding of confidentiality. The FBI, in connection with a wide variety of criminal and national security investigations, solicits and receives information regularly from state, local, and foreign agencies and authorities. Inherent in the cooperative effort is the mutual understanding that the identity of such a source and the information provided by it will be held in confidence by the FBI, and not released pursuant to FOIA and/or Privacy Act requests. If disclosure of information provided in confidence were to be made public pursuant to FOIA and/or Privacy requests, cooperation between the FBI and those agencies and authorities would be greatly diminished, causing great detriment to effective law enforcement. Accordingly, the FBI properly withheld this information pursuant to Exemption (b)(7)(D)-6.

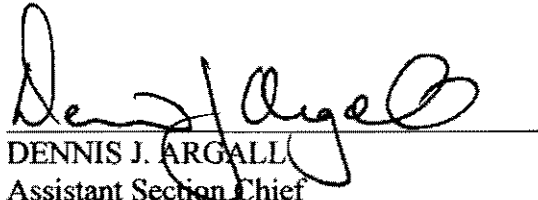
### **CONCLUSION**

(53) The FBI has processed and released all segregable information from the informant records pertaining to Ernest Withers and has properly withheld the remaining material pursuant to FOIA Exemptions 2, 6, 7(C), and 7(D), 5 U.S.C. §§ 552 (b)(2), (b)(6), (b)(7)(C), and (b)(7)(D). The FBI carefully examined the documents and determined that the information withheld from plaintiff Perrusquia in this case: (1) reflects internal personnel rules and practices; (2) if disclosed, would cause a clearly unwarranted invasion of personal privacy, or could

reasonably be expected to constitute an unwarranted invasion of personal privacy, or (3) would disclose the identities of confidential sources or information provided by confidential sources.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct, and that Exhibits A and B attached hereto are true and correct copies.

Executed this 2nd day of July, 2012.

A handwritten signature in black ink, appearing to read "Dennis J. Argall", is written over a horizontal line.

DENNIS J. ARGALL  
Assistant Section Chief  
Record/Information Dissemination Section  
Records Management Division  
Federal Bureau of Investigation  
Winchester, Virginia